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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/927,131	08/10/2001	Gowri Rajaram	UTL 00104	4248

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EXAMINER

CHOW, CHIH CHING

ART UNIT

PAPER NUMBER

2192

DATE MAILED: 02/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	09/927,131		RAJARAM ET AL.	
	Examiner		Art Unit	
	Chih-Ching Chow		2192	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 November 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 6-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 6-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 August 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12/13/04</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is responsive to amendment dated November 07, 2005.
2. Per Applicants' request, independent claims 1, 10, and 19 have been amended, claims 9, 18, and 27 canceled.
3. Claims 1-3, 6-38 remain pending.
4. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 09/02/2005 has been entered.

Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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6. Claim 1 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 18 of copending Application No.10/665,962. Although the conflicting claims are not identical, they are not patentably distinct from each other, from the comparison listed in the following table:

Current Application (09/927,131) US 2003/0033599	Co-Application (10/665,962) US 2005/0064847
Claim 1	Claim 18
<p>In a wireless telephone, a method for executing dynamic instruction sets, the method comprising:</p> <ul style="list-style-type: none"> executing system software on the wireless telephone, the system software for establishing an air interface connection with a wireless service provider; receiving dynamic instructions sets using the air interface connection; launching a run-time engine on the wireless telephone; processing the received dynamic instruction sets using the run-time engine; operating on system data and system software using the dynamic instruction set and the run-time engine; and, in response to operating on the system data and system software, controlling the execution of the system software. 	<p>A wireless communication device, comprising: a data storage area having a current area code and a current area code table, wherein the current area code is included in the current area code table; a runtime engine configured to receive an update instruction via a wireless communication network, the update instruction comprising a new area code and a new area code operation code; an operation code library comprising the new area code operation code; and a set of runtime instructions corresponding to the new area code operation code, wherein the wireless communication device receives the update instruction and executes the runtime instructions corresponding to the new area code operation code to replace the current area code in the data storage area with the new area code.</p>

Claim 1 of current application is anticipated by co-application claim 18 in that co-application claim 18 contains all the limitations of the current application claim 1. Claim 1 of the current application therefore is not patentably distinct from co-application claim 18 and as such is unpatentable for obvious-type double patenting.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

7. Claim 20 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 18 of copending Application No. 10/665,962. Although the conflicting claims are not identical, they are not patentably distinct from each other, from the comparison listed in the following table:

Current Application (09/927,131) US 2003/0033599	Co-Application (10/665,962) US 2005/0064847
Claim 20	Claim 18
In a wireless communications device, a dynamic instruction set execution system, the system comprising: executable system software and system data differentiated into code sections; dynamic instruction sets for operating on the system data and the system software, and controlling the execution of the system software; and, a run-time engine for processing the dynamic instruction sets.	A wireless communication device, comprising: a data storage area having a current area code and a current area code table, wherein the current area code is included in the current area code table; a runtime engine configured to receive an update instruction via a wireless communication network, the update instruction comprising a new area code and a new area code operation code; an operation code library comprising the new area code operation code; and a set of runtime instructions corresponding to the new area code operation code, wherein the wireless communication device receives the update instruction and executes the runtime instructions corresponding to the new area code operation code to replace the current area code in the data storage area with the new area code.

Claim 20 of current application is anticipated by co-application claim 18 in that co-application claim 18 contains all the limitations of the current application claim 1. Claim 20 of the current application therefore is not patentably distinct from co-application claim 18 and as such is unpatentable for obvious-type double patenting.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,622,017 by Hoffman (hereinafter “Hoffman”).

CLAIM

1. In a wireless telephone, a method for executing dynamic instruction sets, the method comprising:
executing system software on the wireless telephone, the system software for establishing an air interface connection with a wireless service provider;
receiving dynamic instructions sets using the air interface connection;
launching a run-time engine on the wireless telephone;
processing the received dynamic instruction sets using the run-time engine;
operating on system data and system software using the dynamic instruction set and the run-time engine; and
in response to operating on the system

Hoffman

See Hoffman's column 3, lines 35-43, “When a terminal is distributed to a subscriber of communication services offered by a wireless network, the subscriber selects one or more features from those available through the network (*establishing connection*). The methodology then involves retrieving an executable program module corresponding to the selected feature from the database. That module is downloaded into the program memory in the subscriber's **wireless communication terminal**, to enable that terminal to implement the selected feature”(*receiving*); also see column 4, lines 29-39, “In the case of the software invention, the programming code

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data and system software, controlling the execution of the system software.

on any such medium comprises a **plug-in terminal feature module** (*software that adds features to a larger piece of software – at run time, dynamic instructions*) for execution by a controller of a wireless communication terminal (*runtime engine*). The module is compatible with a predetermined program interface implemented by the wireless communication terminal”.

20. In a wireless communications device, a dynamic instruction set execution system, the system comprising: executable system software and system data differentiated into code sections; dynamic instruction sets for operating on the system data and the system software, and controlling the execution of the system software; and, a run-time engine for processing the dynamic instruction sets.

See claim 1 rejection, also see FIG. 1 and column 5 lines 13-42; core programming section, M1; and, memory section M2 (data plug-in).

Conclusion

The following summarizes the status of the claims:

35 USC § 102 rejection: Claims 1, 20

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chih-Ching Chow whose telephone number is 571-272-3693. The examiner can normally be reached on 7:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Q. Dam can be reached on 571-272-3695. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Any inquiry of a general nature of relating to the status of this application should be directed to the TC2100 Group receptionist: 571-272-2100.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Chih-Ching Chow

Examiner

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February 2, 2006

CC



TUAN DAM
SUPERVISOR/EXAMINER